

Restitution Procedures and Form Instructions for Victims

Restitution Liens

According to A.R.S. §13-806, a victim may file a Restitution Lien once the defendant has been sentenced and if the defendant has been ordered to pay restitution to the victim. According to A.R.S. §13-806 (A), there are **no** filing fees or charges for this type of lien. **If a Criminal Restitution Order (CRO) was filed in the criminal case in which you were a victim and ordered to receive restitution you do not need to file a Restitution Lien.** Contact the Victim Services Unit of the prosecutor's office to determine whether or not a CRO was entered by the sentencing Court if you are unsure.

A CRO is a lien entered by the sentencing Court in a criminal case. CROs benefit victims: interest begins to accrue earlier; liens are recorded earlier; victims have a judgment that can be enforced through civil measures such as wage and bank account garnishments. Additionally, having the CRO means victims do not have to file their own restitution lien which puts their personal information as lienholder out into the public domain.

Please keep in mind that establishing a Restitution Lien does take some time but can be an effective tool in helping to collect restitution. In addition, the Restitution Lien is only effective if the defendant owns property (vehicles or homes) and if the defendant chooses to sell that property. It is not necessary to know if or what the defendant owns. The lien will need to be recorded with both the County and the State to become effective. Filing a Restitution Lien does not put any one victims ahead of, or in a higher priority for repayment than, another victim ordered restitution in the same criminal case.

The other item to keep in mind is that once all restitution has been paid, it is the responsibility of the lienholder/victim that placed a Restitution Lien on any vehicles or property to provide for the release of the lien or liens involved.

Filing a Restitution Lien

If you wish to pursue filing a Restitution Lien, please follow the procedures below:

1. Complete **{SAMPLE A} Restitution Lien**. All of the information is necessary. Since the defendant's personal information is not public, no one within the Court will be able to provide the information to you. You may find the defendant's full name and date of birth on the court sentencing document.
2. Take the completed **Restitution Lien** to the original sentencing judge (or division if the judge is no longer on the bench) or the original prosecutor for signature. You will need either the original and/or four (4) certified copies back. Some courts may keep the original for the court file. By taking the Restitution Lien to the Court for signature the clerk may be able to provide you with certified copies without having to go to Step #3. Please be aware that the lien holder's (victim's) name, address and phone must be included on this form which is sent to the defendant.
3. If you are given the original back, then it will need to be taken the Clerk of the Court to be placed in the court file and you will need to request four (4) certified copies (for County Recorder, Motor Vehicle Department, Secretary of State and you). If mailing the original then use **{SAMPLE E} Clerk of Court Cover Letter** and include a stamped, self-addressed envelope for the return of the certified copies.

4. Take a certified copy of the **Restitution Lien** to the County Recorder's Office to be recorded. According to A.R.S. § 33-967, you must include **{SAMPLE H} Information Statement of Judgment Creditor form**. The Recorder's Office will either record the document while you wait or send you the recorded document later. If mailing the certified copy then use **{SAMPLE C} County Recorder Cover Letter** and include a stamped, self-addressed envelope.

5. Mail a certified copy of the **Restitution Lien** with the **{SAMPLE B} MVD Request for Lien Letter** to the Motor Vehicle Department (MCV) for holds on the defendant's vehicle registration(s).

Motor Vehicle Division
Title Maintenance Section, Room 554M
1801 W Jefferson
Phoenix, AZ 85007

It is not necessary to know if the defendant has any registered vehicles in his/her name. The MVD will not send anything back to verify that it recorded the lien and cannot discuss an individual's MVD record with another party.

6. Once the all documents have been recorded and the liens are in place, you will need to attempt to notify the defendant of the **Restitution Lien** by delivering or by sending (*certified mail is preferable and provides you with a record of notice*) a copy of the **{Sample D} Notice of Restitution Lien** to: Adult Probation if the defendant is on probation (the department is under no obligation to serve the defendant but may be willing to assist you); to the Department of Corrections if the defendant is in custody; or to the defendant's address if he/she is neither on probation nor in DOC.

WHAT TO EXPECT

If a defendant sells a vehicle upon which a lien has been placed, the holder of the title of that vehicle will contact the Lien holder that appears on the Restitution Lien.

You may be contacted by either the seller, defendant, MVD, a 3rd party MVD or the buyer requesting to transfer the title out of the defendant's name. Payment should be made payable to and mailed to the County Clerk of the Court for distribution.

If a defendant attempts to sell property upon which a lien has been recorded, the title company will contact the Lien holder that appears on the Restitution Lien.

Many people have similar or same names. You may be contacted by numerous title companies to verify if someone is indeed "one and the same" as their client. It is up to you to match the information that the title company has with the information on your Restitution Lien. If the information does match, then the title company may require written payoff instructions. Payment should be made payable to and mailed to the County Clerk of the Court for distribution.

The Restitution Lien does not need to be renewed, nor can it be discharged in bankruptcy. The lien is in effect until the debt is paid in full.

Releasing a Restitution Lien

When a defendant has paid the restitution in full, the Restitution Lien must be released. The victim has a statutory obligation to release the lien when it is paid in full. Failure to release a lien in a timely manner could result in civil repercussions, including law suits, court fines, damages, attorney fees, etc.

A victim/lienholder may receive inquiries regarding the filed lien. It is the responsibility of the lienholder to confirm that the person for whom the inquiry is made is the actual defendant by verifying name and date of birth.

To Remove a Restitution Lien on a Vehicle:

1. Complete a **{Sample F} MVD Request for Release of Lien Letter** for an individual vehicle or for all vehicles in defendant's name. A partial release is allowed in order to permit the sale of a vehicle to go through and the proceeds processed through the Clerk of the Court for payment.
2. Make a copy for your records and file the original Release of Lien Letter with MVD. To file the release send each original of the **MVD Request for Release of Lien Letter** to:

Motor Vehicle Division
Title Maintenance Section, Room 554M
1801 West Jefferson
Phoenix, AZ 85007

To Remove a restitution Lien on Real Property:

1. Complete the **{Sample G} Release of Restitution Lien on Real Property** form.
2. Obtain two certified copies:
 - File the original with the Clerk of the Court
 - Keep a certified copy for your records
 - File a certified copy of the **Release of Restitution Lien on Real Property** with the County Recorder's Office in the county where the lien was filed.

Enforcement

Obtaining a restitution lien or order does not mean you will receive prompt payment of your economic losses. You may need further help from the court. If you have not received timely payments of restitution, Arizona law allows you to seek help from the court. Any person entitled to restitution based on a court order may petition the court to order the defendant to show cause (offer a reason) why the non-payment of restitution should not be treated as contempt. After you file a petition, the court may schedule a hearing requiring the defendant to appear and give testimony under oath concerning his or her financial condition, employment and assets or any other issue affecting the ability to make restitution payments.

A victim may file such a motion with the original trial judge requesting the defendant to appear, explain the reason for non-payment and allow the court to evaluate how best to ensure payment of restitution.

Filing a Petition

If you wish to file a petition to bring the defendant before the court for non-payment of restitution, please follow the procedures below:

1. Complete **{SAMPLE I} Petition for Order to Show Cause**. All of the information is necessary. You will need case information including the date the court ordered restitution, the amount, the manner of payment ordered, the amount currently in arrears and the overall outstanding balance remaining.
2. Take the completed **Petition for Order to Show Cause** to the Clerk of Court with jurisdiction over the original criminal case. You will file the petition with the Clerk of Court which will forward the file and motion to the court for review and to schedule a hearing. You should take your original for the court and a copy for the clerk to date stamp and return to you as proof of filing. Please be aware that the name, address and phone number of the person filing (victim) must be included on this form which will be a public court document.
3. If the court schedules a hearing on the petition you will receive notice from the Court. As the person requesting the hearing you should attend the hearing to address the defendant's failure to comply with the original restitution order otherwise the court may dismiss your motion. You have the right to question the defendant about the non-compliance. The Court will issue orders based on the testimony and information presented at the hearing. You should receive a copy of the court's Minute Entry document summarizing the proceeding or other orders entered by the court.